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IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

KARL STORZ ENDOSCOPY-AMERICA, INC., No. C 09-00355 WHA

Plaintiff,

v.

**CORRECTED ORDER
RE APRIL 27 HEARING**

STRYKER CORPORATION and STRYKER
COMMUNICATIONS, INC.,

Defendants.

AND RELATED COUNTERCLAIMS

This action was filed in November 2007 and was reassigned to the undersigned judge in January 2011. Before reassignment, multiple rounds of claim construction briefing were filed and cross-motions for summary judgement were briefed (one fully and the other partially), but none of these issues were decided. The case management scheduling order entered after reassignment set a claim construction and summary judgment hearing for April 27.

As to claim construction, the parties were directed to propose a briefing schedule leading up to the April 27 hearing. The parties did so, and the proposed scheduling order was entered (Dkt. No. 253). The briefs filed in accordance with this schedule shall supercede all claim construction briefing filed before the January 2011 reassignment of the case. The claim construction hearing remains set for April 27, 2011.

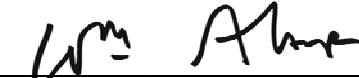
1 As to summary judgment, it was decided at the January 2011 case management
2 conference that there would be no more summary judgment motions other than those already
3 pending (Dkt. No. 259 at 5). In light of the renewed claim construction briefing, the fifteen-
4 month pendency of defendants' summary judgment motion, and the incomplete briefing of
5 plaintiff's summary judgment motion, the parties are invited to reconsider whether summary
6 judgment should be deferred until after a claim construction ruling issues. Specifically, each
7 party should elect one of the following courses of action with respect to its pending motion for
8 summary judgment on or before **MARCH 21, 2011**: (1) re-notice the motion, or an updated
9 version of it, for hearing on April 27; or (2) withdraw the motion without prejudice to filing a new
10 summary judgment motion after the claim construction order issues.

11 If a party decides to rest on previously filed summary judgment materials either
12 supporting or opposing a summary judgment motion to be heard on *April 27*, then the party
13 should file a notice listing all such previous filings and should please lodge new chambers copies
14 of those items. *The notice and new chambers copies should be submitted at the time when the*
15 *corresponding brief, opposition, or reply normally would be due. This procedure will help*
16 *mitigate the difficulty that the pending summary judgment motions were filed and briefed many*
17 *months ago before a different judge.*

18 If a moving party elects to postpone summary judgment, then the deadline for filing a new
19 summary judgment motion on the normal 35-day track will be **DECEMBER 1, 2011**.

21 **IT IS SO ORDERED.**

23 Dated: March 18, 2011.



WILLIAM ALSUP
UNITED STATES DISTRICT JUDGE

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